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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,403	03/12/2004	Frank Boyer	BOYER-PA-1	7143

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EXAMINER

JOHNSON, STEPHEN

ART UNIT PAPER NUMBER

3641

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/800,403

Applicant(s)

BOYER, FRANK

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Claims 1 and 3-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 4, use of the phrase “a shotgun” makes the claim indefinite as to whether the previously claimed ‘shotgun’ (claim 1, line 2) or some other shotgun is intended. If the previously claimed shotgun is intended, the claim language should read [said shotgun]. Please clarify.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1 and 3-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As amended, applicant claims “said stepwise taper ... along at least two-thirds a length of said channel”. In the written description, as originally filed, applicant only has support for “through approximately  $\frac{2}{3}$  the length of the choke”.

4. Claims 1 and 3-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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As amended, applicant claims "said stepwise taper ... along at least two-thirds a length of said channel". In the written description, as originally filed, applicant only has an enabling support for "through approximately 2/3 the length of the choke".

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3, 5-7, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Dow (114).

Dow (114) discloses a choke with associated shotgun comprising:

- |                                           |                         |
|-------------------------------------------|-------------------------|
| a) a hollow tubular member;               | see figs. 2, 4, 6       |
| b) a coupling at one end;                 | 12                      |
| c) a stepwise taper;                      | 32                      |
| d) evenly spaced annular projections; and | 32                      |
| e) a shotgun.                             | page 1, col. 1, line 10 |

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dow (114) in view of Hengstenberg (945).

Dow (114) applies as previously recited. However, undisclosed is a textured or

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roughened outer surface to enhance gripping. Hengstenberg (945) teaches a textured or roughened outer surface to enhance gripping (col. 2, lines 49-51). Applicant is selecting a means known in this art to enhance gripping and putting it to use as it is already commonly known to be used in this art. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Hengstenberg (945) to the Dow (114) choke device and have a choke device with a textured outer surface.

9. Claims 1, 3-7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Janecek et al. (207) in view of Catron (315).

Janecek et al. (207) disclose a muzzle attachment comprising:

- |                                       |                                         |
|---------------------------------------|-----------------------------------------|
| a) a hollow tubular member;           | 4 or 11                                 |
| b) a coupling at one end;             | see figs. 2, 4, 9                       |
| c) a stepwise taper;                  | 5 or 12                                 |
| d) evenly spaced annular projections; | 5 or 12; page 1, col. 1, lines<br>52-53 |
| e) separated wadding; and             | 2, 8, 9                                 |
| f) a projectile.                      | 1, 6, 7                                 |

Janecek et al. applies as recited above. However, undisclosed is a projectile that is composed of a plurality of shots. Catron teaches a projectile enclosed by wadding that is composed of a plurality of shots 39, 40, 41. Applicant is substituting one projectile arrangement for another in an analogous art setting as explicitly encouraged by the primary reference (see Janecek et al., page 2, col. 1, lines 5 and 41-45). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Catron to the

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Janecek et al. muzzle attachment and have a muzzle attachment that is used in combination with shot projectiles.

10. Claims 1, 3-7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briley (477) in view of Janecek et al. (207).

Briley (477) discloses a choke and associated shotgun comprising:

- a) a hollow tubular member with internal taper; and 10
- b) a coupling that consists of an external series of screw threads. 12

However, undisclosed is a plurality of evenly spaced steps located along at least 2/3 of the taper. Janecek et al. (207) teach a plurality of evenly spaced steps located along at least 2/3 of the taper (see figs. 2 or 4). Applicant is substituting one internal surface arrangement of the taper for another as explicitly encouraged by Janecek et al. (compare figs. 2 and 4 with figs. 7 and 9). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Janecek et al. to the Briley choke and have a choke whose taper includes evenly spaced steps.

11. Claims 1, 3, 5-6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Linde et al. (925).

Linde et al. (925) disclose a choke with associated shotgun comprising:

- a) a hollow tubular member; see fig. 6
- b) a coupling at one end; 84
- c) a stepwise taper; 92-106
- d) evenly spaced annular projections; 92-106
- e) a ramp; and 92-106

e) a shotgun.

see abstract

12. Applicant's arguments with respect to claims 1 and 3-9 have been considered but are moot in view of the new ground(s) of rejection.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is ([Stephen.Johnson@uspto.gov](mailto:Stephen.Johnson@uspto.gov)). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



**STEPHEN M. JOHNSON**  
**PRIMARY EXAMINER**

Stephen M. Johnson  
Primary Examiner  
Art Unit 3641

SMJ  
December 15, 2005